

MCCUNE DAVIS FLOOR AMENDMENT

SENATE AMENDMENTS TO S.B. 1019

(Reference to printed bill)

1 Page 4, between lines 9 and 10 insert:

2 "Sec 2. Section 33-1256, Arizona Revised Statutes, is amended to read:

3 33-1256. Lien for assessments; priority; mechanics' and
materialmen's liens; applicability

4
5 A. The association has a lien on a unit for any assessment levied
6 against that unit from the time the assessment becomes due. The
7 association's lien for assessments, for charges for late payment of those
8 assessments, for reasonable collection fees and for reasonable attorney fees
9 and costs incurred with respect to those assessments may be foreclosed in the
10 same manner as a mortgage on real estate but may be foreclosed only if the
11 owner has been delinquent in the payment of monies secured by the lien,
12 excluding reasonable collection fees, reasonable attorney fees and charges
13 for late payment of and costs incurred with respect to those assessments, for
14 a period of one year or in the amount of one thousand two hundred dollars or
15 more, whichever occurs first. **A COURT MAY LIMIT THE AMOUNT OF ATTORNEY FEES**
16 **INCLUDED IN THE ASSOCIATION'S LIEN.** Fees, charges, late charges, monetary
17 penalties and interest charged pursuant to section 33-1242, subsection A,
18 paragraphs 10, 11 and 12, other than charges for late payment of assessments,
19 are not enforceable as assessments under this section. If an assessment is
20 payable in installments, the full amount of the assessment is a lien from the
21 time the first installment of the assessment becomes due. The association
22 has a lien for fees, charges, late charges, other than charges for late
23 payment of assessments, monetary penalties or interest charged pursuant to
24 section 33-1242, subsection A, paragraphs 10, 11 and 12 after the entry of a
25 judgment in a civil suit for those fees, charges, late charges, monetary
26 penalties or interest from a court of competent jurisdiction and the
27 recording of that judgment in the office of the county recorder as otherwise
28 provided by law. The association's lien for monies other than for
29 assessments, for charges for late payment of those assessments, for
30 reasonable collection fees and for reasonable attorney fees and costs

1 incurred with respect to those assessments may not be foreclosed and is
2 effective only on conveyance of any interest in the real property.

3 B. A lien for assessments, for charges for late payment of those
4 assessments, for reasonable collection fees and for reasonable attorney fees
5 and costs incurred with respect to those assessments under this section is
6 prior to all other liens, interests and encumbrances on a unit except:

7 1. Liens and encumbrances recorded before the recordation of the
8 declaration.

9 2. A recorded first mortgage on the unit, a seller's interest in a
10 first contract for sale pursuant to chapter 6, article 3 of this title on the
11 unit recorded prior to the lien arising pursuant to subsection A of this
12 section or a recorded first deed of trust on the unit.

13 3. Liens for real estate taxes and other governmental assessments or
14 charges against the unit.

15 C. Subsection B of this section does not affect the priority of
16 mechanics' or materialmen's liens or the priority of liens for other
17 assessments made by the association. The lien under this section is not
18 subject to chapter 8 of this title.

19 D. Unless the declaration otherwise provides, if two or more
20 associations have liens for assessments created at any time on the same real
21 estate, those liens have equal priority.

22 E. Recording of the declaration constitutes record notice and
23 perfection of the lien for assessments, for charges for late payment of those
24 assessments, for reasonable collection fees and for reasonable attorney fees
25 and costs incurred with respect to those assessments. Further recordation of
26 any claim of lien for assessments under this section is not required.

27 F. A lien for unpaid assessments is extinguished unless proceedings to
28 enforce the lien are instituted within three years after the full amount of
29 the assessments becomes due.

30 G. This section does not prohibit actions to recover sums for which
31 subsection A of this section creates a lien or does not prohibit an
32 association from taking a deed in lieu of foreclosure.

1 H. A judgment or decree in any action brought under this section shall
2 include costs and reasonable attorney fees for the prevailing party.

3 I. The association on written request shall furnish to a lienholder,
4 escrow agent, unit owner or person designated by a unit owner a statement
5 setting forth the amount of unpaid assessments against the unit. The
6 statement shall be furnished within fifteen days after receipt of the request
7 and the statement is binding on the association, the board of directors and
8 every unit owner if the statement is requested by an escrow agency that is
9 licensed pursuant to title 6, chapter 7. Failure to provide the statement to
10 the escrow agent within the time provided for in this subsection shall
11 extinguish any lien for any unpaid assessment then due.

12 J. The association shall record in the office of the county recorder
13 in the county in which the condominium is located a notice stating the name
14 of the association or designated agent or management company for the
15 association, the address for the association and the telephone number of the
16 association or its designated agent or management company. The notice shall
17 include the name of the condominium community, the date of the recording and
18 the recorded instrument number or book and page for the main document that
19 constitutes the declaration. If an association's address, designated agent
20 or management company changes, the association shall amend its notice or
21 record a new notice within ninety days after the change.

22 K. Notwithstanding any provision in the condominium documents or in
23 any contract between the association and a management company, unless the
24 member directs otherwise, all payments received on a member's account shall
25 be applied first to any unpaid assessments, for unpaid charges for late
26 payment of those assessments, for reasonable collection fees and for unpaid
27 attorney fees and costs incurred with respect to those assessments, in that
28 order, with any remaining amounts applied next to other unpaid fees, charges
29 and monetary penalties or interest and late charges on any of those amounts.

30 L. This section does not apply to timeshare plans or associations that
31 are subject to chapter 20 of this title."

32 Renumber to conform

33 Page 7, between lines 9 and 10 insert:

1 “Sec. 4. Section 33-1807, Arizona Revised Statutes, is amended to
2 read:

3 33-1807. Lien for assessments; priority; mechanics' and
4 materialmen's liens

5 A. The association has a lien on a unit for any assessment levied
6 against that unit from the time the assessment becomes due. The
7 association's lien for assessments, for charges for late payment of those
8 assessments, for reasonable collection fees and for reasonable attorney fees
9 and costs incurred with respect to those assessments may be foreclosed in the
10 same manner as a mortgage on real estate but may be foreclosed only if the
11 owner has been delinquent in the payment of monies secured by the lien,
12 excluding reasonable collection fees, reasonable attorney fees and charges
13 for late payment of and costs incurred with respect to those assessments, for
14 a period of one year or in the amount of one thousand two hundred dollars or
15 more, whichever occurs first. **A COURT MAY LIMIT THE AMOUNT OF ATTORNEY FEES**
16 **INCLUDED IN THE ASSOCIATION'S LIEN.** Fees, charges, late charges, monetary
17 penalties and interest charged pursuant to section 33-1803, other than
18 charges for late payment of assessments are not enforceable as assessments
19 under this section. If an assessment is payable in installments, the full
20 amount of the assessment is a lien from the time the first installment of the
21 assessment becomes due. The association has a lien for fees, charges, late
22 charges, other than charges for late payment of assessments, monetary
23 penalties or interest charged pursuant to section 33-1803 after the entry of
24 a judgment in a civil suit for those fees, charges, late charges, monetary
25 penalties or interest from a court of competent jurisdiction and the
26 recording of that judgment in the office of the county recorder as otherwise
27 provided by law. The association's lien for monies other than for
28 assessments, for charges for late payment of those assessments, for
29 reasonable collection fees and for reasonable attorney fees and costs
30 incurred with respect to those assessments may not be foreclosed and is
31 effective only on conveyance of any interest in the real property.

1 B. A lien for assessments, for charges for late payment of those
2 assessments, for reasonable collection fees and for reasonable attorney fees
3 and costs incurred with respect to those assessments under this section is
4 prior to all other liens, interests and encumbrances on a unit except:

5 1. Liens and encumbrances recorded before the recordation of the
6 declaration.

7 2. A recorded first mortgage on the unit, a seller's interest in a
8 first contract for sale pursuant to chapter 6, article 3 of this title on the
9 unit recorded prior to the lien arising pursuant to subsection A of this
10 section or a recorded first deed of trust on the unit.

11 3. Liens for real estate taxes and other governmental assessments or
12 charges against the unit.

13 C. Subsection B of this section does not affect the priority of
14 mechanics' or materialmen's liens or the priority of liens for other
15 assessments made by the association. The lien under this section is not
16 subject to chapter 8 of this title.

17 D. Unless the declaration otherwise provides, if two or more
18 associations have liens for assessments created at any time on the same real
19 estate those liens have equal priority.

20 E. Recording of the declaration constitutes record notice and
21 perfection of the lien for assessments, for charges for late payment of
22 assessments, for reasonable collection fees and for reasonable attorney fees
23 and costs incurred with respect to those assessments. Further recordation of
24 any claim of lien for assessments under this section is not required.

25 F. A lien for an unpaid assessment is extinguished unless proceedings
26 to enforce the lien are instituted within three years after the full amount
27 of the assessment becomes due.

28 G. This section does not prohibit:

29 1. Actions to recover amounts for which subsection A of this section
30 creates a lien.

31 2. An association from taking a deed in lieu of foreclosure.

32 H. A judgment or decree in any action brought under this section shall
33 include costs and reasonable attorney fees for the prevailing party.

1 I. On written request, the association shall furnish to a lienholder,
2 escrow agent, unit owner or person designated by a unit owner a statement
3 setting forth the amount of any unpaid assessment against the unit. The
4 association shall furnish the statement within fifteen days after receipt of
5 the request, and the statement is binding on the association, the board of
6 directors and every unit owner if the statement is requested by an escrow
7 agency that is licensed pursuant to title 6, chapter 7. Failure to provide
8 the statement to the escrow agent within the time provided for in this
9 subsection shall extinguish any lien for any unpaid assessment then due.

10 J. The association shall record in the office of the county recorder
11 in the county in which the planned community is located a notice stating the
12 name of the association or designated agent or management company for the
13 association, the address for the association and the telephone number of the
14 association or its designated agent or management company. The notice shall
15 include the name of the planned community, the date of the recording and the
16 recorded instrument number or book and page for the main document that
17 constitutes the declaration. If an association's address, designated agent
18 or management company changes, the association shall amend its notice or
19 record a new notice within ninety days after the change.

20 K. Notwithstanding any provision in the community documents or in any
21 contract between the association and a management company, unless the member
22 directs otherwise, all payments received on a member's account shall be
23 applied first to any unpaid assessments, for unpaid charges for late payment
24 of those assessments, for reasonable collection fees and for unpaid attorney
25 fees and costs incurred with respect to those assessments, in that order,
26 with any remaining amounts applied next to other unpaid fees, charges and
27 monetary penalties or interest and late charges on any of those amounts."

28 Renumber to conform

29 Amend title to conform

3/5/08
2:45 PM
S: GV/dr